

**JUL 22 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON**

**U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

DARRYL TAYLOR,

Plaintiff - Appellant,

v.

SEALAND SERVICES; CSX LINES,

Defendants - Appellees.

No. 02-16092

D.C. No. CV-00-04357-VRW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Vaughn R. Walker, District Judge, Presiding

Argued and Submitted July 18, 2003  
San Francisco, California

Before: REINHARDT, SILER\*\*, and HAWKINS, Circuit Judges.

Appellant Darryl Taylor neither included a claim for racial harassment or hostile work environment in his complaint nor sought to amend the complaint for

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Eugene E. Siler, Circuit Judge, United States Court of Appeals for the Sixth Circuit, sitting by designation.

that purpose. Although he raised a contention regarding the two subjects in the case management statement, he advised the court prior to the summary judgment hearing that he was withdrawing any such “claim.” Nevertheless, the district court granted summary judgment on the non-existent claim. That part of the judgment is vacated.

As to the failure to promote claim, Taylor sought further discovery, but he failed to file a Rule 56(f) statement and in response to the court’s inquiry, failed to offer sufficient facts to show that additional discovery would lead to admissible evidence that might preclude summary judgment. Nidds v. Schindler Elevator Corp., 113 F.3d 912, 921 (9<sup>th</sup> Cir. 1997). Thus, the district court did not abuse its discretion in denying a continuance. The grant of summary judgment on the failure to promote claim is affirmed.

Accordingly, the district court’s decision is

**VACATED IN PART AND AFFIRMED IN PART.**